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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14 AMERICAN IMMIGRATION COUNCIL,
15 AMERICAN IMMIGRATION LAWYERS
ASSOCIATION, and HUMAN RIGHTS
WATCH,

16 Plaintiffs,

17 v.

18 UNITED STATES CITIZENSHIP AND
19 IMMIGRATION SERVICES, UNITED
STATES CUSTOMS AND BORDER
20 PROTECTION, and UNITED STATES
IMMIGRATION AND CUSTOMS
21 ENFORCEMENT,

22 Defendants.

) CASE NO. C-20-cv-03266-DMR

) **JOINT CASE MANAGEMENT STATEMENT**

) **Date: February 3, 2021**

) **Judge: Hon. Donna M. Ryu**

) **Time: 1:30 pm**

) **Location: Remote**

1 The parties to the above-entitled action submit this JOINT CASE MANAGEMENT
2 STATEMENT pursuant to the Standing Order for All Judges of the Northern District of California,
3 Judge Ryu's Standing Orders, and Civil Local Rule 16-9.

4
5 **1. JURISDICTION & SERVICE**

6 Plaintiffs American Immigration Council, American Immigration Lawyers Association, and
7 Human Rights Watch ("Plaintiffs") filed this action on May 13, 2020. Dkt. No. 1. Defendants United
8 States Citizenship and Immigration Services ("USCIS"), United States Customs and Border Protection
9 ("CBP"), and United States Immigration and Customs Enforcement ("ICE") (collectively "Defendants")
10 have been served.

11 This Court has subject matter jurisdiction of this action and personal jurisdiction over the parties
12 pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has subject matter jurisdiction over this action
13 pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

14 Defendants note that "[a]bsent a waiver, sovereign immunity shields the Federal Government
15 and its agencies from suit." *FDIC v. Meyer*, 510 U.S. 461, 475 (1994). The waiver in this case has only
16 been asserted under FOIA, and no other provisions.

17 **2. FACTS**

18 **Plaintiffs' Statement of Facts**

19 Plaintiffs submitted four FOIA Requests to the Senior Director of FOIA Operations at the
20 Department of Homeland Security ("DHS") on December 21, 2019. One request was directed to DHS;
21 one to USCIS, one to CBP, and one to ICE. Plaintiffs sought records and data that reflect DHS's current
22 policies and practices regarding the MPP Plaintiffs sought expedited processing of their Requests under
23 28 C.F.R. § 16.5(e) and 6 C.F.R. § 5.5(e). DHS received these Requests on January 24, 2020. On
24 February 3 and 4, 2020, DHS transferred three of the Requests to FOIA Officers at USCIS, CBP, and
25 ICE. Then, on February 5, 2020, DHS transferred 6 out of 7 topics from another request to USCIS and
26 CBP.

27 Defendants began producing documents after this lawsuit was filed, and since the last JCMS
28 filed on November 25, 2020, Defendants have continued to produce documents to Plaintiffs.

Defendants' Statement of Facts

In response to Plaintiffs' FOIA requests, Defendants have commenced searches reasonably calculated to lead to all responsive documents and have also begun production of such documents. Defendants also refer the Court to Defendant's Answer and Affirmative Defenses filed on June 30, 2020. Dkt. No. 20. Since the last JCMS filed on November 25, 2020, Defendants have continued to produce responsive documents to Plaintiffs.

3. LEGAL ISSUES**Plaintiffs' Statement**

The issues in this litigation are:

- 1) Whether Defendants have violated the Freedom of Information Act, 5 U.S.C. § 552, by failing to properly respond within the time required;
- 2) Whether Defendants have violated the Freedom of Information Act, 5 U.S.C. § 552, by failing to conduct an adequate search for responsive documents; and
- 3) Whether Defendants have violated the Freedom of Information Act, 5 U.S.C. § 552, by improperly withholding responsive records.

Defendants' Statement

In response to Plaintiffs' FOIA requests, Defendants have commenced searches reasonably calculated to lead to all responsive documents and have also commenced production of responsive documents.

4. MOTIONS

The defendant agencies have continued search of and production of documents, and the parties do not believe motions need to be scheduled at this juncture. The parties are also meeting and conferring about a possible narrowing of the search terms directed at Defendant CBP. The parties reserve the right to file motions.

1 **5. AMENDMENT OF PLEADINGS**

2 Plaintiff filed a First Amended Complaint on June 16, 2020 (Dkt. No. 18) and Defendants filed
3 an Answer on June 30, 2020 (Dkt. No. 20). The parties do not anticipate any further amendment to the
4 pleadings.

5
6 **6. EVIDENCE PRESERVATION**

7 Defendants agree to preserve evidence relevant to the issues reasonably evident in this action,
8 and the parties do not anticipate any issues related to evidence preservation.

9
10 **7. DISCLOSURES**

11 Both parties maintain that this case is likely to be decided on the administrative records, and as
12 such is exempt from initial disclosures. Fed. R. Civ. P. 26(a)(1)(B)(i).

13
14 **8. DISCOVERY**

15 Defendants maintain that discovery is typically inappropriate in FOIA cases and will object to
16 any discovery requests. *See Lane v. Dept. of Interior*, 523 F.3d 1228, 1134 (9th Cir. 2008) (discovery is
17 limited in FOIA cases “because the underlying case resolved around the propriety of revealing certain
18 documents”); *Wheeler v. CIA*, 271 F. Supp. 2d 132, 139 (D.D.C. 2003) (citing *Judicial Watch, Inc. v.*
19 *Export-Import Bank*, 108 F. Supp. 2d 19, 25 (D.D.C. 2000)).

20 **9. CLASS ACTIONS**

21 N/A

22
23 **10. RELATED CASES**

24 There are no related cases or proceedings pending before another judge of this court or another
25 court or administrative body.

26
27 **11. RELIEF**

28 Plaintiffs seek declaratory and injunctive relief.

1 Defendants seek a dismissal of the action with prejudice, and such other relief as may be
2 appropriate.

3
4 **12. SETTLEMENT AND ADR**

5 The parties will work to resolve this matter expeditiously. If needed, the parties will request
6 referral to a Magistrate Judge for settlement.

7
8 **13. CONSENT TO A MAGISTRATE JUDGE FOR ALL PURPOSES**

9 The parties have consented to a magistrate judge to conduct all further proceedings including
10 trial and entry of judgment.

11
12 **14. OTHER REFERENCES**

13 N/A

14
15 **15. NARROWING OF ISSUES**

16 The parties expect any issues to be narrowed via Defendants' subsequent searches and
17 production schedule, and via motions if necessary.

18
19 **16. EXPEDITED TRIAL PROCEDURE**

20 The parties do not believe that this is the type of case that should be handled under the Expedited
21 Trial Procedure of General Order 64, Attachment A.

22
23 **17. SCHEDULING**

24 Given that Defendants are moving forward with production, the parties request deferral of any
25 scheduling of motions.

26
27 **18. TRIAL**

28 Trials are not typical in FOIA cases, and the parties do not believe a trial will be necessary in this
case.

1
2 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

3 Plaintiffs are not aware of any non-party interested entities or persons.

4 Defendants are exempt from this requirement as a federal government entity.

5
6 **20. PROFESSIONAL CONDUCT**

7 Counsel for all parties have reviewed the Guidelines for Professional Conduct for the Northern
8 District of California.

9
10 **21. OTHER**

11 N/A.

12 Respectfully submitted,

13 Dated: January 27, 2021

14
15 Respectfully submitted,

16 DAVID L. ANDERSON
17 UNITED STATES ATTORNEY

18 /s/ Julie Bibb Davis
19 Julie Bibb Davis
20 Assistant United States Attorney
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